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Letter dated 31 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/400).

The Counter-Terrorism Committee has received the attached supplementary report from Costa Rica, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Letter dated 12 July 2002 from the Permanent Representative of Costa Rica to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour of referring to your letter of 1 April 2002, in which you requested a number of clarifications to the report submitted by Costa Rica on 24 December 2001, pursuant to paragraph 6 of Security Council resolution 1373 (2001), and of enclosing my Government's second report.

(*Signed*) Bernd **Niehaus**
Ambassador
Permanent Representative

Appendix

Second report of the Republic of Costa Rica concerning measures adopted pursuant to United Nations Security Council resolution 1373 (2001), June 2002*

The Government of Costa Rica is pleased to submit to the United Nations Security Council Counter-Terrorism Committee its replies to the questions set forth in note S/AC.40/2002/MS/OC.33 from the Committee's Chairman. As in the first report, the replies are presented in the same order as the paragraphs and subparagraphs of resolution 1373 (2001) of 28 September 2001.

Paragraph 1

Subparagraph (a) — Under article 15 of Act No. 8204, persons who engage in systematic or substantial transfers of funds effected by any means are subject to this Act. Does this description include money transfer agencies?

Article 15, paragraph (c), of Act No. 8204 establishes that obligations under this Act are applicable to persons who transfer funds irrespective of the means used; similarly, under paragraphs (a), (b) and (d) of this article, the obligations are applicable to persons who carry out systematic or substantial money-changing operations and transfers through any instrument and systematic or substantial operations with respect to the issuance, sale, recovery or transfer of traveller's cheques or postal or money orders, or who manage trust funds or any other resources. Individuals and legal entities engaging in such activities must register with the Office of the Superintendent of Financial Institutions (SUGEF) and are subject to the supervision of that Office with respect to money-laundering.

The report states that individuals or legal entities that carry out the activities mentioned under article 15 of Act No. 8204 and that are not supervised by any of the existing Superintendents' Offices in Costa Rica must register with SUGEF. Are any money transfer agencies registered with SUGEF?

To date, the process of registration of individuals or companies engaged in the activities listed in the aforementioned subparagraphs of article 15 has not yet begun, there being no corresponding legal regulation. Such a regulation will soon be adopted by the Costa Rican executive branch. At that time, notices will be published in the print media inviting all individuals and legal entities carrying out such activities to register with SUGEF. Notwithstanding the fact that this process has not yet begun, companies and individuals engaged in such activities have shown interest in being supervised by SUGEF.

Subparagraph (b) — Please outline the legal enactments which expressly prohibit the holding of funds and/or the financing of terrorist acts, as required under this subparagraph.

In Costa Rica the financing of terrorist acts has not yet been defined as an offence. However, as explained in the previous report, the categories of accessory, co-perpetrator and instigator may currently serve as a basis for prosecuting and

* The annexes are on file with the Secretariat and are available for consultation.

punishing individuals who support terrorism-related offences by funding them. In Costa Rica there exists the political will to draw up a special law on terrorism in the near future, not only characterizing the financing of terrorism as a criminal offence, but also establishing financial controls for the detection of such offences and mechanisms for the freezing and confiscation of resources destined for that purpose. Such controls and mechanisms could be similar to those established by Act No. 8204.

That Act, it will be recalled, regulates financial activities and establishes penalties to prevent the penetration of money deriving from serious crimes and from all procedures that may serve as a means of laundering such money. A serious offence is understood to mean an offence punishable by a minimum of four years' imprisonment or a harsher penalty.

Subparagraph (c) — Does Act No. 8204 provide for the freezing of funds that are kept in Costa Rica by persons and entities within or outside Costa Rica who are connected with terrorist acts outside Costa Rica? Could Costa Rica please outline the legislative provisions which meet the requirement of the resolution regarding the freezing of economic resources.

In respect of the freezing of funds, article 83 of Act No. 8204 establishes that: "All movable and immovable property, vehicles, instruments, equipment, securities, money and other objects used in the commission of the crimes described in this Act, together with any property or securities deriving from such crimes, shall be confiscated as a preventive measure by the competent authority dealing with the case; the same shall apply in respect of the actions, funding and property of legal persons connected with such acts."

Similarly, article 86 of this Act establishes that: "If an investigation is initiated by the competent authorities following an illicit act or action covered by this Act, all financial institutions, whether autonomous or part of a financial group, shall have the obligation to safeguard all information, documentation, securities and money that may be used as evidence or proof in the investigation or a judicial proceeding; money or securities held in deposit or for safekeeping must be frozen or deposited with the Central Bank of Costa Rica, and the authorities must be informed of the action taken. The aforementioned obligations shall apply from the moment the institutions receive a formal notice of an investigation or a criminal judicial proceeding from the authorities, or from the moment the institutions file the corresponding report."

Act No. 8204 thus lays down clear procedures for the freezing of suspicious funds deriving from the commission of serious offences. However, the Act does not cover the possibility of freezing funds that may be used for the financing of offences, including acts of terrorism. For this reason, the best option is now considered to be the drafting of a special law on terrorism incorporating similar mechanisms. In this case, the legal basis for freezing funds as a preventive measure would be the lists drawn up by the United Nations Security Council.

Subparagraph (d) — What are the intentions of Costa Rica with regard to the introduction of a specific offence criminalizing the financing of terrorism?

The Government of Costa Rica is beginning to draft a special law on terrorism. As noted above, one of its main components will be the introduction of an offence

criminalizing the financing of terrorism, along with the establishment of financial controls in order to detect this offence and mechanisms for the freezing and seizure of related resources. It is expected that work on the draft will begin soon and will be carried out by an inter-agency group representing the various State bodies involved in work against terrorism.

What financial tracking system exists to ensure that funds received by bodies such as charities are not diverted from their stated purposes, for example, to the support of terrorist activities? Please describe such a system.

Under Act No. 8204, every regulated financial institution must appoint an official concerned with compliance. Article 27 of this Act establishes that: "Financial institutions shall designate officials responsible for ensuring compliance with internal programmes and procedures, including proper record keeping and the reporting of suspicious transactions. Such officials shall serve as liaison with the competent authorities. The management or administration of the respective financial institution shall provide proper channels of communication to help the officials do their work, which it shall supervise". These officials are thus responsible for tracking or monitoring the transactions carried out by the clients of their financial institutions, and any unusual or suspicious situation, including one involving the financing of terrorism, must be reported to the appropriate supervisory body.

Paragraph 2

Subparagraph (a) — The report does not make clear what legal provisions exist prohibiting recruitment to terrorist groups. Could Costa Rica please provide additional information on this?

As indicated in the previous report, Costa Rica has no criminal offence expressly prohibiting the recruitment of terrorists. However, it has the offence of unlawful association (art. 274 of the Penal Code), which carries with it a sentence of one to six years' imprisonment for "anyone taking part in an association of two or more persons with the aim of committing offences, simply by virtue of membership in the association". The sentence is increased to three to ten years' imprisonment "if the aim of the association is to carry out acts of terrorism". Similarly, article 374 imposes sentences of ten to fifteen years on leaders and members of international groups, one of whose aims is to commit terrorist acts. These provisions are currently sufficient to prosecute and punish any person who is part of a terrorist group. At the same time, we could, if necessary, consider including in the special law on terrorism a new criminal offence expressly prohibiting the recruitment of terrorist groups.

Article 88 of the Arms and Explosives Act prohibits the possession of prohibited weapons. Please explain how trade in permitted weapons is regulated.

Article 68 of the Arms and Explosives Act (Act No. 7530 of 10 July 1995) establishes that "For the manufacture, storage, trade, import and export of arms, munitions, explosives, devices, explosive powder of any kind and raw materials for the manufacture of the products regulated by this Act, any individual or legal entity must have a permit from the Arms Directorate, which shall issue it in accordance with this Act and its Regulations ...". In accordance with article 69, such permit applications must indicate characteristics, quantity, origin and means of distribution and sale, and in addition a specific permit from the Ministry of Health must be

attached. The customs service shall not authorize clearance without such a permit. Under the same article, the authorization of the Ministry of Security shall be required when the number of arms is over 100.

Under article 73, regular permits for the manufacture, import, export and trade of permitted firearms, munitions and explosives shall be issued for one year and may be renewed for the same duration. However, if the provisions of the Arms and Explosives Act are violated, such permits shall be cancelled immediately. Furthermore, under article 74 trade and commercial establishments dealing regularly in permitted weapons shall be registered with the Department of Arms and Explosives.

Those authorized to deal in permitted weapons must within three working days inform the Department, by means of a form supplied by it, of the sale of weapons, providing any information required to identify the purchaser and the weapons (art. 75). The weapons, objects and materials referred to in this Act that require a permit to be imported must be used for the purposes specified, and any modification, change or transformation of the stipulated use requires a new permit (art. 76).

When imported or exported weapons, objects and materials are held in customs, those concerned must report this to the Department so that it may designate a representative to deal with the appropriate customs office; otherwise, withdrawal from government control or departure from the country will not be permitted (art. 78). General permits for any of the activities regulated under this chapter will include a permit for transport within the national territory of the arms, objects and materials covered; however, the holders of such permits must observe the laws, regulations and provisions in respect of the required security measures (art. 79). Individuals or legal entities with general permits for the specialized transport of arms, munitions and objects mentioned in this Act must request a copy of the issued permit from the sender (art. 80).

Subparagraph (b) — Does inter-agency cooperation cover all agencies involved in preventing and suppressing terrorism?

The region's intelligence community includes the countries of North America, Central America, Panama, the Dominican Republic and Colombia. Outside the region, it includes Spain, Germany, Italy, Israel and Taiwan Province of China. Cooperation in anti-terrorist activities has not, however, extended to the rest of the countries of South America and the Caribbean, despite the fact that subjects who are of interest because of their nationality and even militants from such terrorist organizations as ETA and IRA are temporarily or permanently located there. Costa Rica has no relations with the intelligence bodies of such countries.

The only channel for sustaining relations with other anti-terrorist organizations would be through the International Criminal Police (Interpol), which, though not an intelligence organization, maintains communications with members throughout the world. However, such communication refers to subjects which have been identified as having committed some type of crime, and not to subjects that could potentially commit an offence ranging from an ordinary crime to a terrorist act. Interpol, it should be recalled, focuses on suppression once an offence is committed, while intelligence organizations seek to prevent criminal acts at any level.

Subparagraph (c) — Are the relevant provisions of the Penal Code of Costa Rica applicable in all the following circumstances:

– Acts committed outside Costa Rica by a person who is a citizen of, or habitually resident in, Costa Rica (whether that person is currently present in Costa Rica or not);

Any applicable Costa Rican legislation in such cases is to be found in articles 5, 6 and 7 of the Penal Code, which read as follows:

EXTRATERRITORIALITY. Article 5: Costa Rican penal law shall also apply to punishable acts committed in other countries when such acts:

(1) Jeopardize the internal or external security of the State or its economy; and

(2) Are committed against the public administration by officials in its service, whether or not they are Costa Rican.

POSSIBILITY OF INITIATING LEGAL PROCEEDINGS FOR PUNISHABLE ACTS COMMITTED IN OTHER COUNTRIES. Article 6: Legal proceedings may be initiated for punishable acts committed in other countries, and Costa Rican law may apply, when such acts:

(1) Produce or may produce effects wholly or in part, in the national territory;

(2) Were committed by persons in the service of Costa Rica, and such persons have not been tried in the place where the acts were committed owing to diplomatic immunity or their immunity of office; and

(3) Are perpetrated against a Costa Rican or the rights of a Costa Rican.

INTERNATIONAL CRIMES. Article 7: Irrespective of the provisions in force in the place where a punishable act is committed and the nationality of the perpetrator, persons committing punishable acts against human rights as stipulated in treaties to which Costa Rica is a party or in this Code shall be subject to punishment under Costa Rican law. In accordance with article 374, terrorism is considered an international crime.

However, article 8 of the same Code states that in the cases described in articles 6 and 7, in order for crimes to be punishable in Costa Rica, it is necessary for the offender to be in the national territory; this is not true for cases covered by article 5, for which only State action is required.

– Acts committed outside Costa Rica by a foreign national who is currently in Costa Rica?

The provisions of the Costa Rican Penal Code are not applicable in such cases; such a person would simply be the subject of extradition, in accordance with the extradition treaties to which our country is a party.

Paragraph 3

Subparagraph (a) — Could Costa Rica please provide the CTC with a progress report on the ratification of the relevant international conventions and protocols relating to terrorism to which it is not yet a party.

Costa Rica has not yet completed the process of ratifying or acceding to the conventions and protocols listed below. All, with the exception of the Convention against Transnational Organized Crime and its three protocols, have been adopted by the Legislative Assembly in second reading, while the Convention specified has the approval of the International Relations Committee.

1. International Convention for the Suppression of the Financing of Terrorism, signed in New York on 9 December 1999. Approved in second reading on 18 April 2002 and currently awaiting publication.

2. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988. Approved in second reading on 23 April 2002 and currently awaiting publication.

3. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, signed at Rome on 10 March 1988. Signed by Costa Rica and awaiting approval by the Legislative Assembly. Approved in second reading on 18 April 2002 and currently awaiting publication.

4. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, signed at Rome on 10 March 1988. Signed by Costa Rica and awaiting approval by the Legislative Assembly. Approved in second reading on 23 April 2002 and currently awaiting publication.

5. Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980. Not signed by Costa Rica; accession awaiting approval by the Legislative Assembly. Approved in second reading on 23 April 2002 and currently awaiting publication.

6. International Convention against the Taking of Hostages, signed in New York on 17 December 1979. Not signed by Costa Rica; accession awaiting approval by the Legislative Assembly. Approved in second reading on 18 April 2002 and currently awaiting publication.

7. Convention against Transnational Organized Crime, signed in New York on 15 November 2000. Signed by Costa Rica and awaiting approval by the Legislative Assembly. Approved on 23 April in the International Relations Committee. File No. 14620.

8. Protocol against the Smuggling of Migrants by Land, Sea or Air, supplementing the United Nations Convention against Transnational Organized Crime. Approved on 16 April 2002 in the International Relations Committee. File No. 14621.

9. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations

Convention against Transnational Organized Crime. Approved on 16 April 2002 in the International Relations Committee. File No. 14623.

10. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Approved on 16 April 2002 in the International Relations Committee. File No. 14624.

It should be added that Costa Rica signed the Inter-American Convention against Terrorism on 2 June 2002 at the thirty-second session of the General Assembly of the Organization of American States, held at Bridgetown, Barbados. The process of ratification will start shortly.

How has Costa Rica incorporated into its domestic legislation those conventions and protocols to which it is party and how does it propose to incorporate the conventions and protocols it has not yet ratified?

Annex I contains a table showing the principal obligations deriving from international conventions on terrorism and the related national legislation. It can be seen from this table that Costa Rica has incorporated in its legislation the vast majority of provisions established in these conventions, or else the national legislation has the necessary instruments for their implementation. There are still some lacunae, however, in the case of the conventions whose process of ratification has not yet been completed, including with respect to the suppression of the financing of terrorism. It is therefore intended to draft a special law on terrorism to remedy these lacunae.

Have the crimes set forth in the international conventions and protocols been incorporated as extraditable offences in bilateral treaties that Costa Rica has concluded with other countries?

The terrorism-related crimes which have been included in Costa Rican legislation are extraditable. The current extradition agreements which Costa Rica maintains (with the United States, Taiwan, Spain, Mexico, Colombia and Nicaragua) establish, as a general rule, that an offence will be considered extraditable if the laws of both Contracting Parties ascribe to it a maximum penalty of imprisonment exceeding one year or a more severe penalty (with the exception of the treaty with Nicaragua, in which the maximum penalty established is two years' imprisonment). All the treaties include also the attempt to commit a terrorism-related crime and complicity in its commission.

As a general rule, political crimes are excluded from extraditable offences. In some cases, as in the treaty with Spain, it is expressly stated that the mere allegation of political motives is not sufficient for the crimes to be considered political, and it is also expressly mentioned that an attempt on the life of a Head of State or Government or a member of his or her family is not to be considered a political crime. The agreement with Mexico expressly states that terrorism is not considered a political crime for purposes of extradition. It also excludes the following as political crimes: (a) attacks on the life, physical integrity and liberty of internationally protected persons, including diplomatic agents; (b) any serious act of violence which is directed against the life, physical integrity or liberty of such persons; (c) crimes involving rape, hostage-taking or arbitrary abduction; (d) crimes involving the use of bombs or explosive devices.

In conclusion, terrorism-related crimes would be extraditable offences.

Subparagraph (b) — Please explain whether Costa Rica recognizes claims of political motivation as a ground for refusing extradition requests of alleged terrorists.

Extradition in Costa Rica is governed by Act No. 4795 on Extradition, of 16 July 1971, as amended by Act No. 5497, of 21 March 1974 and Act No. 5991, of 9 November 1976. Article 3 states:

"Extradition shall neither be offered nor granted:

(...)

(g) When a crime is political or, although an ordinary offence, politically related, under Costa Rican law (...)"

In Costa Rica, however, terrorism is not considered a political crime. In this respect the following definition should be noted: "a purely political offence or crime is one that is directed solely against the political order, as may be the case with treason, sedition or espionage" (Gómez-Robledo Verduzco, Alonso. "Extradición en Derecho Internacional, Aspectos y Tendencias Relevantes", Universidad Nacional Autónoma de México, 2002).

In this context, the Costa Rican Penal Code, Act No. 4573, classifies "Crimes against public order" under Title X, "Crimes against the security of the nation", including treason (art. 277) and espionage (art. 288), under Title XI, and "Crimes against public authorities and the constitutional order", including rebellion (art. 294) and rioting (art. 297), under Title XII. These are the crimes which can be considered political.

Please provide a list of countries with which Costa Rica has concluded bilateral treaties on extradition.

List of countries with which Costa Rica has signed bilateral extradition treaties

Country	*Date of signature*	*Whether or not in force*
Belgium	25/04/1902	No date of expiration given
Chile	26/01/1874	No date of expiration given
Colombia	28/02/1873	Not in force
Colombia	26/02/1901	Not in force
Colombia	07/05/1928	In force
Italy	06/05/1873	In force
Italy	10/02/1968	Not in force
Mexico	13/10/1989	In force
Nicaragua	19/01/1884	Not in force

Country	*Date of signature*	*Whether or not in force*
Nicaragua	09/10/1885	Not in force
Nicaragua	08/11/1893	In force
Panama	22/10/1913	Not in force
Panama	29/11/2001	Not in force
Paraguay	14/08/2001	Not in force
Peru	14/01/2002	Not in force
Spain	24/10/1898	Not in force
Spain	23/10/1997	In force
Taiwan Province of China	12/12/1984	In force
United States of America	10/11/1922	Not in force
United States of America	21/04/1982	In force
United States of America	30/04/1990	In force

Paragraph 4

Has Costa Rica addressed any of the concerns expressed in paragraph 4 of the resolution? (Connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials? Need to coordinate efforts at the national, subregional and international levels in order to strengthen a global response to this challenge.)

The connections between international terrorism and transnational crime, illicit drugs and money-laundering, inter alia, have been explored by the Directorate of Intelligence and Security (DIS) at the national, subregional and regional levels by means of an exchange of information on terrorism and related actions since 1994, the year in which DIS included international terrorism and related crimes as a permanent item in our national security agenda.

Accordingly, intelligence work is carried out routinely with respect to terrorism-related crimes, and the results are analysed and shared with the international intelligence community. Gaps occur when such crimes are committed in countries in which DIS does not maintain relations and whose experience is unknown to it, such experience being essential to a better understanding of the operating methods of terrorist organizations.

Other matters

Could Costa Rica please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution.

Annex II contains an organizational chart showing the principal security authorities whose work is concerned with countering terrorism.